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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,092	07/11/2001	Vincent De Laforcade	05725.0945-00000	8085

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WASHINGTON, DC 20001-4413

EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/902,092	Applicant(s) DE LAFORCADE, VINCENT	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Applicant's request for reconsideration filed 08/31/05 has been entered and carefully considered. However, arguments regarding rejections 35 U.S.C 103 have not been found to be persuasive, therefore, claims 1, 3-26 are rejected under the same ground rejections as set forth in the office action mailed 06/01/05.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-5, 7, 11-15, 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pflueger et al (6123198) in view of Moyer (5,794,773).

With regard to claims 1, 4-5, 7, 11-15 and 21-26, Pflueger et al discloses a cosmetic container (fig. 2) comprising a foam core (14, at least one recess (38) formed in the foam core, a cosmetic composition (lipstick 52) contained in the recess (42) of the foam core and a covering material (22) covering at least a portion of the foam core and defining an exterior surface of the cosmetic product, the covering material being made of vinyl (col. 3, line 42; the cosmetic composition having a cosmetic substance contained within a tray (it is noted that lipstick substance contained within a tray or

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tube). Pflueger does not disclose the cover being made by at least partially foam, a snap fastener and a foam hinge connecting the lid and the container. Moyer discloses a bowling ball device (figs. 1 and 3) comprising a base (12) forming at least partially of foam (28), a cover (14) forming at least partially of foam (30) for securing the balls and equipment in place (abstract, lines 3-5), a hinge (24) being formed at least partially of foam (col. 3, lines 20-22), the hinge integrally connecting the base and the cover, a plurality of recesses (32, 42) being formed in at least the base and the cover, a covering material being made of different material than foam covering at least a portion of the base, the cover and the hinge (col. 2, lines 66-67 and col. 3, line 1); the base and the cover each having a snap (18) located thereon. It would have been obvious to one skill in the art at the time the invention was made to employ the foam cover, the snap fastener as taught in Pflueger et al into the device of Moyer for the purpose of providing an effective and convenient way of holding the cosmetic products.

Claims 8-9 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pflueger et al in view of Moyer.

With regard to claims 8-9 and 19-29, Pflueger et al in view of Moyer disclose a cosmetic product comprising all the claimed limitations as discussed above in claims 1 and 4 except for the material of the cover being Lycra or fabric. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the cover being Lycra or fabric, since it has been held to be

within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 10 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pflueger et al in view of Moyer et al as applied to claims 1 and 4 above, and further in view of Skarne.

With regard to claims 10 and 16-18, Pflueger et al in view of Moyer disclose a cosmetic product in claims 1 and 4 as discussed above except for a mirror being in the recess and the foam edges surrounding the mirror and the material of the cover being Lycra. Skarne discloses a cosmetic compact (figs. 2-3) comprising a base (28) and a cover (26) forming at least partially of foam (col. 2, lines 1-12), a hinge (30) connecting the base and the cover and at least one recess (54) forming in the base and the recess containing a cosmetic composition, the compact further having a mirror (22) and a recess (50) in the cover containing and surrounding edges of the mirror (fig. 3). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the mirror as taught by Skarne into the cosmetic product of Pflueger et al in view of Moyer for the makeup purpose and it would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the material of the cover being Lycra, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pflueger et al in view of Moyer as applied to claims 1 and 4 above, and further in view of Gueret.

With regard to claims 3 and 6, Pflueger et al in view of Moyer disclose a cosmetic product in claims 1 and 4 as discussed above except for the cosmetic composition being directly deposited in the at least one recess. Gueret discloses a cosmetic compact (fig. 2) comprising a base (5), a cover (2), the base having at least one recess (11c) wherein the cosmetic composition (8) being directly deposited in the recess. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to deposit the cosmetic composition directly in the recess as taught by Gueret into the compact of Pflueger et al in view of Moyer for the intended use purpose.

Applicant has argued that there is no motivation to combine a bowling ball device to a cosmetic container, however, it is noted that Moyer's reference is from a different art and it has held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the foam padding of Moyer teaches solving the same general problem as applied in the instant application.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

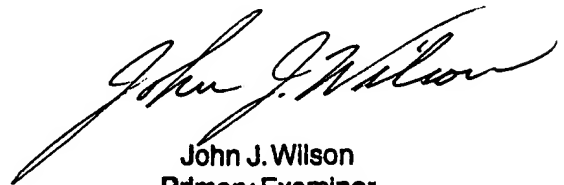
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan



John J. Wilson  
Primary Examiner